

Pennsylvania State University

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No. 07c401

**WITNESSETH:**

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the "Division") and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include mailing unsolicited documents to Tennessee businesses offering to sell labor law posters which were required by State and Federal law to be posted in the workplace. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

### **1. DEFINITIONS**

As used in this Assurance and accompanying Agreed Order, the following words and terms shall have the following meanings:

- 1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Mandatory Poster Agency, Inc., a foreign corporation d/b/a Labor Law Poster Service and as Tennessee Labor Law Poster Service, and as The Tennessee Mandatory Poster Agency.*

- 1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 "Covered Conduct" refers to solicitations sent by Respondent to Tennessee consumers regarding the sale of labor law posters prior to the date of the entry of this Assurance.
- 1.4 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.5 "Respondent" means Mandatory Poster Agency, Inc., whether it is doing business as The Tennessee Labor Law Poster Service, or through its principals, officers, directors, employees, representatives, successors, assigns, or through any other subsidiary, affiliate, corporation, assumed name or business entity.
- 1.6 "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Office of the Tennessee Attorney General.
- 1.7 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

### **3. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

### **4. PERMANENT INJUNCTION**

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondent shall not, directly or by implication, misrepresent in any manner to Tennessee consumers the status of Respondent's business operations, or otherwise misrepresent, through the use of solicitation, envelope, other mailing device or communication that Respondent, or the contents of any of its communications, are in any way connected to a government or government agency, including but not limited to:

- a. Use of a company name in a solicitation which includes words or terms that have the tendency or capacity to mislead persons to whom the solicitation is directed to believe that Respondent is a government agency or has a contract with a government agency to provide a product or

service, including but not limited to, use of the words "agency," and "mandatory" in a company name;

- b. Use of solicitation materials, including mailing envelopes or exterior of mailings, that include words or terms that have the tendency or capacity to mislead persons to whom the solicitation is directed to believe that Respondent is a government agency or have a contract with a government agency to provide a product or services, including but not limited to:
  - i. Use of the words "government information" and/or "official business";
  - ii. Symbols that include the outline of a state of the United States of America or outline of the United States of America;
  - iii. Reference to possible criminal or civil penalties or other governmental actions that may be imposed on businesses or individuals for failure to comply with labor poster laws that are inaccurate;
  - iv. Use of names of departments that are non-existent or do not represent actual entities, divisions or departments;
  - v. Use of the term "confidential" when referring to any of Respondent's solicitations;
  - vi. Referring to documents as delivered by registered mail, express mail, special delivery, or any other form of mail delivery other than

by the rate that actually applies, such as bulk rate or first class mail; and

- vii. Use of "Notice Numbers" or similar identifiers in any communications relating to Respondent's product unless such identifier is in fact employed by Respondent for a specific business purpose.

4.3 Respondent shall not state or imply in a solicitation for the sale of labor law posters that the persons to whom the solicitation is directed must purchase labor law posters from Respondent or that Respondent is the sole source of the posters.

4.4 Respondent shall clearly and conspicuously disclose in all solicitations for the sale of labor law posters that posters containing the same or like information may be obtained free of charge from government agencies.

4.5 Respondent shall clearly and conspicuously disclose in all solicitations for the sale of labor law posters that Respondent is not a government agency and does not have contracts with government agencies to supply the posters to the public.

4.6 Respondent shall not misrepresent directly, or by implication or omission of material fact, the legal requirement(s) of a labor law posting in any solicitation.

4.7 Respondent shall not cause likelihood of confusion or of misunderstanding as to the source, sponsorship, or approval or certification of its goods or services in violation of Tenn. Code Ann. § 47-18-104(b)(2).

## **5. RESTITUTION**

5.1 Upon execution of this Assurance, Respondent shall pay the Attorney General the sum of Two Thousand and 00/100 Dollars (\$2,000.00) to establish a fund to be used for consumer protection purposes, including but not limited to the possible payment of restitution to consumers and any expenses associated with paying the restitution. Said payment shall be made by certified check made payable to the "Treasurer - State of Tennessee, Attorney General".

5.2 The Attorney General may pay ascertainable losses to Tennessee consumers who have filed complaints with the Tennessee Attorney General, the Tennessee Division of Consumer Affairs, or the BBB of Middle Tennessee prior to entry of this Assurance. The Attorney General may pay ascertainable losses to Tennessee consumers who file verifiable complaints with the Tennessee Attorney General, the Tennessee Division of Consumer Affairs, or the BBB of Middle Tennessee within 90 days after entry of this Assurance.

5.3 The Attorney General's Office reserves the right to submit a restitution plan to the Court for approval. The Respondent agrees not to object or otherwise interfere with the Attorney General's proposed restitution plan.

5.4 Any funds remaining from the amount received pursuant to paragraph 5.1 after paying restitution to consumers will be used to fund a consumer education project(s) selected at the sole discretion of the Director of the Division of Consumer Affairs.

## **6. ATTORNEYS' FEES AND COSTS**

6.1 Respondent shall be liable for and pay to the State of Tennessee attorneys fees and costs associated with the State's investigation of Respondent in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), which may be used for consumer protection purposes at the sole discretion of the Attorney General.

6.2 Said fees shall be paid by the Respondent within thirty (30) days of Respondent's execution of this Assurance by certified check made payable to "Treasurer, State of Tennessee - Attorney General".

## **7. GENERAL PROVISIONS**

7.1 In addition to any other remedies available under state law, Respondent agree that a violation by Respondent of any requirement of this Assurance shall entitle the Attorney General to seek and obtain a Judgment from the Davidson County Circuit Court naming Respondent as defendant, which will include a permanent injunction containing the requirements of paragraphs 4.1 through 4.5, and ordering that Respondent pay restitution to each Tennessee resident or entity who has purchased a labor law poster product from Respondent, together with payment of investigative costs and attorney fees incurred by the Attorney General. Respondent agrees not to oppose entry of the Judgment, unless it alleges that it has complied in all respects with this Assurance. The Attorney General agrees to provide Respondent written notice of the Attorney General's intent to seek entry of the above-referenced Judgment at least 30 days prior to seeking its entry.

7.2 Respondent agrees that this Assurance shall not in any way bar the Attorney General from taking further action regarding Respondent's advertisement, sale, or leases of merchandise on or after the effective date of this Assurance that are not covered by this Assurance. It is understood that any violations of the requirements of this Assurance are subject to Paragraph 7.1 and any other remedies available under state law. Respondent further agrees that this Assurance shall not in any way limit the authority of the Attorney General to take any action relating to any sales practices employed by Respondent prior to the effective date of this



Assurance about which the Attorney General is not aware prior to the date of this Assurance, except as to those matters involved herein.

7.3 This Assurance shall be binding upon, inure to the benefit of, and apply to the parties and their successors-in-interest. This Assurance shall be binding upon and apply to the officers, directors, shareholders, owners, successors, assigns, and/or members of Respondent. This Assurance shall not create or affect any private rights or causes of action in any third-parties.

7.4 This Assurance does not constitute an approval by the Attorney General of any of Respondent's sales practices and Respondent shall make no representation to the contrary.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to them by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

8.2 Respondent and its officers, directors, shareholders, owners and/or members represent that signatories to this Assurance have authority to act for and bind Respondent.

8.3 Respondent and its officers, directors, shareholders, owners and/or members will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

8.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

8.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

8.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the Attorney General with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

8.7 Respondent warrants and represents that Mandatory Poster Agency, Inc., doing business as Labor Law Poster Service and as Tennessee Labor Law Poster Service and as the Tennessee Mandatory Poster Agency, is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

8.8 Mandatory Poster Agency, Inc., d/b/a Labor Law Poster Service, Tennessee Labor Law Poster Service, and The Tennessee Mandatory Poster Agency, represents that these are the legal names of the each entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if the

representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

8.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

8.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

8.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

8.12 This Assurance and Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

8.13 Nothing in the Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or another governmental entity from enforcing laws, regulations or rules against Respondent.

8.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

8.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

8.16 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agree that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

8.17 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

8.18 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

8.19 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

## **9. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

9.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

## **10. FILING OF ASSURANCE**

10.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

## **11. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS**

11.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to Mandatory Poster Agency, Inc., Labor Law Poster Services, Tennessee Labor Law Poster Service, The Tennessee Mandatory Poster Agency, each of their officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities that control, manage or operate, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

## **12. RELEASE**

12.1 The Attorney General agrees to release and discharge Respondent from any civil causes of action that the Attorney General can bring under the Tennessee Consumer Protection

Act, Tenn. Code Ann. §§ 47-18-101, *et seq.* for the Covered Conduct. The Attorney General does not waive any other causes of action and does not waive any causes of action for any activity that is not specifically covered by the Covered Conduct referenced in Section 1.3.

### **13. NOTIFICATION TO STATE**

13.1 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

13.2 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by certified United States mail, return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202  
Tel: (615) 741-1671

For the Respondent Mandatory Poster Agency, Inc.,  
Labor Law Poster Service, Tennessee Labor Law  
Poster Service and The Tennessee Mandatory Poster  
Agency:

5859 West Saginaw Hwy. #343  
Lansing, MI 48917

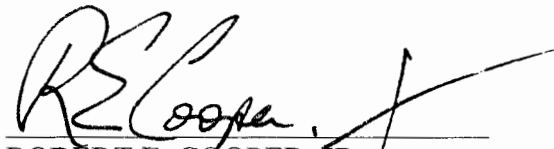
and

David R. Brake  
Knaggs, Harter, Brake and Schneider, P.C.  
7521 Westshire Dr. Ste 100  
Lansing, MI 48917

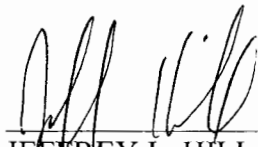
#### **14. COURT COSTS**

14.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:



ROBERT E. COOPER, JR.  
Attorney General & Reporter  
B.P.R. No. 10934



JEFFREY L. HILL  
Senior Counsel  
B.P.R. No. 16731  
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Consumer Advocate and Protection Division  
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fax: 615-532-2910

Approved by:

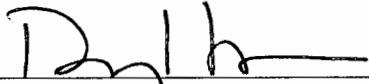
A handwritten signature in black ink, reading "Mary Clement". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

MARY CLEMENT  
DIRECTOR

Division of Consumer Affairs  
Department of Commerce and Insurance  
500 James Robertson Parkway  
5th Floor, Davy Crockett Tower  
Nashville, TN 37243-0600  
(615) 741-4737



FOR RESPONDENT:



DOUGLAS HALIJAN 1/11/07

Burch, Porter and Johnson, PLLC

Counsel for Defendant

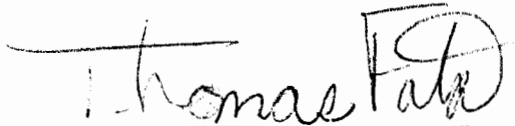
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THOMAS FATA

President

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